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21005	7590	10/17/2006	EXAMINER	
HAMILTON, BROOK, SMITH & REYNOLDS, P.C.			TARAE, CATHERINE MICHELLE	
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P.O. BOX 9133			PAPER NUMBER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/081,020

Applicant(s)

FUNG ET AL.

Examiner

C. Michelle Tarae

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) 45-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 and 60-75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>June 21, 2002</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The following is a Non-Final Office Action in response to the communication received on July 31, 2006. Claims 1-75 are pending in the application. Claims 1-44 and 60-75 have been elected without traverse in response to the Restriction Requirement. Claims 45-59 have been withdrawn from further consideration.

#### ***Information Disclosure Statement***

2. The examiner has reviewed the patents and publications supplied in the Information Disclosure Statement (IDS) provided on June 21, 2002.

#### ***Claim Objections***

3. Claim 6 is objected to because of the following informalities: Claim 6 is missing a period (.) at the end of the claim. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 recites the limitation "management certification" in line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-6, 9-32, 35-40, 44, 60-70 and 72-75 are rejected under 35 U.S.C. 102(a,e) as being anticipated by Ibarra (U.S. 6,119,097).

As per claim 1, Ibarra discloses a method for measuring and analyzing performance data comprising:

collecting transaction data indicative of performance factors (col. 6, lines 15-27; Figure 2; A manager inputs an employee's review indicative of the employee's performance. The employee is reviewed against identified performance standards.);

analyzing the transaction data to compute an aggregate synopsis of performance of a subject under observation (col. 6, lines 53-60; The performance review from the manager is analyzed to determine whether a problem solving work session is required.);

hypothesizing the aggregate synopsis to determine at least one of a plurality of recommended actions (col. 7, lines 1-7 and 55-61; An agreed upon action between a manager and an employee is determined in a problem solving session.);

applying the determined recommended actions to the subject under observation (col. 7, lines 1-7 and 55-61); and

measuring a change in the performance of the subject under observation as a result of applying the determined recommended actions (col. 7, lines 3-5; col. 8, lines 5-9; The actions are determined to improve an area the employee received a substandard score.).

As per claim 2, Ibarra discloses the method of claim 1 wherein measuring a change in performance further comprises repeating the collecting, analyzing, hypothesizing, and applying in an iterative manner (col. 9, lines 21-24; After an initial performance review, a manager is prompted to enter when the next performance review will occur.).

As per claim 3, Ibarra discloses the method of claim 1 wherein hypothesizing further comprises:

comparing the aggregate synopsis to performance scores within a predetermined performance range (col. 5, lines 8-12; col. 6, lines 55-60; Employees' scores are compared to minimum, expected and outstanding levels.); and

mapping the aggregate synopsis to the plurality of recommended actions based on the predetermined performance range (col. 7, lines 8-10; col. 8, lines 1-5; Performance scores that are below the minimum levels are identified as requiring problem solving sessions, or recommended actions.).

As per claim 4, Ibarra discloses the method of claim 3 wherein comparing further comprises providing a set of performance standards, each of the performance

standards corresponding to at least a portion of the aggregate synopsis, the performance standards for determining a ranking within the predetermined performance range (col. 7, lines 8-10; col. 8, lines 1-5; Performance scores that are below the minimum levels are identified as requiring problem solving sessions, or recommended actions; thus, the performance scores correspond to the aggregate synopsis.).

As per claim 5, Ibarra discloses the method of claim 1 wherein the subject under observation further comprises a sales employee, the sales employee having a plurality of levels and the performance standards defined for each of the plurality of levels (col. 4, line 25; Figure 10; In Figure 10 is illustrated performance standards for minimum, expected and outstanding levels for a car salesman.).

As per claim 6, Ibarra discloses the method of claim 4 wherein the performance standards correspond to a subset of a predetermined set of customer focused skills attained by the sales employee (col. 8, lines 47-48 and 59-67; Figures 10-11; Customer focused skills such as sales achievement and percent of closed phone calls are used in determining the performance standards.).

As per claim 9, Ibarra discloses the method of claim 1 further comprising setting timely performance goals corresponding to the subject under observation, and adjusting the predetermined performance range in response to the performance goals (col. 4, lines 44-45 and 50-51; Figure 10).

As per claim 10, Ibarra discloses the method of claim 9 wherein setting the timely performance goals further comprises setting goals according to at least one of daily,

weekly, monthly, quarterly and yearly intervals (col. 4, lines 44-45 and 50-51; Figure 10).

As per claim 11, Ibarra discloses the method of claim 9 further comprising establishing a staffing profile operable to attain the timely performance goal, the staffing profile indicative of optimal staffing levels for each of the sales employee levels (col. 4, lines 37-39 and 40-42; col. 5, lines 1-12; Figure 10; The determination of performance standards, or levels, is conveyed to employees so that they are aware of the desired/required performance levels expected of them. The performance levels are established to achieve a desired performance goal.).

As per claim 12, Ibarra discloses the method of claim 1 wherein the transaction data further comprises external legacy data, field performance data, and training data (col. 6, lines 41-47; Figures 3 and 10; A variety of data is used in the system including performance data and sales data.).

As per claim 13, Ibarra discloses the method of claim 12 wherein the field performance data further includes data indicative of least one of sales per hour (SPH), dollars per transaction (DPT), units per transaction (UPT), transactions per hour (TPH), traffic conversion percentage, customer traffic count, and periodic goals (Figure 10; The performance standards worksheet includes sales.).

As per claim 14, Ibarra discloses the method of claim 12 wherein the external legacy data further includes at least one of administrative data, accounting data, tax data, market research data, merchandise grouping data, human resource data, and

store revenue goal data (Figure 6; The established performance standards may be considered as administrative data.).

As per claim 15, Ibarra discloses the method of claim 1 wherein the aggregate synopsis further comprises report results corresponding to quantitative data (col. 10, lines 15-25; Figure 10; The performance appraisal is a report.).

As per claim 16, Ibarra discloses the method of claim 1 wherein the transaction data corresponds to retail stores and sales employees (col. 4, lines 24-25).

As per claim 17, Ibarra discloses the method of claim 1 wherein applying the determined recommended actions further comprises skill development at a sales employee level and business scenarios and strategies at a store level (col. 7, lines 57-61; col. 8, lines 45-48; A recommended action may be to improve upon an employee's performance factor, such as skill.).

As per claim 18, Ibarra discloses the method of claim 1 wherein the hypothesizing further comprises hypothesizing business scenarios and the recommended actions comprise strategies to improve business operations and staffing profiles for increased sales (col. 5, lines 20-30 and 45-52; The recommended actions are identified such that the employee's performance is improved.).

As per claim 19, Ibarra discloses the method of claim 11 wherein the staffing profile further comprises an optimal aggregation of sales employees of different skill levels (Figure 8 shows sales employees at different skill levels, as indicated by their different performance standards scores.).



Claims 20-21, 25-32, 35-40, 44, 60-63, 65-70 and 72-75 recite substantially similar subject matter as claims 1-6 and 9-19 above. Therefore, claims 20-21, 25-32, 35-40, 44, 60-63, 65-70 and 72-75 are rejected on the same basis as claims 1-6 and 9-19 above.

Additionally, as per claim 22, Ibarra discloses a security schema operable to provide selective access to the transactional data, selective access determined as a function of a need to know and of a user's store manager role within the sales organization (col. 9, lines 33-37; col. 10, lines 48-50).

Additionally, as per claim 23, Ibarra discloses a learning center adapted to implement the determined recommended actions (col. 7, lines 49-67; A problem solving session is a learning center in that it is used to determine recommended actions.).

Additionally, as per claim 24, Ibarra discloses wherein the feedback mechanism is further operable to monitor an advancement cycle of a sales employee based on the gathered transactional data and management certification (col. 5, lines 20-30; Figures 3, 10 and 12; An employee's performance is reviewed on a periodic basis (i.e., monthly) to monitor decline or improvement (i.e., advancement) of the employee, thereby monitoring an advancement cycle of the employee.).

Claim 64 recites substantially similar subject matter as claims 22-24 above. Therefore, claim 64 is rejected on the same basis as claims 22-24 above.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7, 8, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ibarra (U.S. 6,119,097).

As per claim 7, Ibarra discloses the method of claim 4 wherein the performance standards further comprise a scaling matrix operable to scale the performance scores, (col. 11, lines 32-40; A rating scale is used against the performance scores.). Ibarra does not expressly disclose the scaling matrix having scaling factors corresponding to *store characteristics* pertinent to the transaction data. However, since Ibarra does disclose the system being used for salespeople in a car dealership (col. 4, lines 23-25), at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Ibarra to take into consideration store characteristics as the characteristics of car dealerships can vary greatly, thereby incorporation of the store characteristics would help the accuracy of the analysis of a salesperson's performance. For example, if car dealership A generally has more sales volume than car dealership B, the performance standards for salespeople at each car dealership can be scaled to account for the disparity in sales volume.

As per claim 8, Ibarra does not expressly disclose the method of claim 7 wherein the scaling factors further comprise store volume, store location, and timing. However,

Art Unit: 3623

since Ibarra does disclose the system being used for salespeople in a car dealership (col. 4, lines 23-25), at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Ibarra to take into consideration scaling factors such as scaling factors further comprise store volume, store location, and timing as the characteristics of car dealerships can vary greatly, thereby incorporation of store volume, store location, and timing would help the accuracy of the analysis of a salesperson's performance. For example, if car dealership A generally has more sales volume than car dealership B, the performance standards for salespeople at each car dealership can be scaled to account for the disparity in sales volume.

Claims 33-34 recite substantially similar subject matter as claims 7-8 above. Therefore, claims 33-34 are rejected on the same basis as claims 7-8 above.

10. Claims 41-43 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ibarra (U.S. 6,119,097), as applied above, and Osborne et al. (U.S. 6,589,055).

As per claims 41-43, Ibarra does not expressly disclose the system of claim 20 wherein the plurality of recommended actions further correspond to a library of multimedia solutions, the multimedia solutions adapted to provide educational development of skill and knowledge; wherein the multimedia solutions further comprise a curricula of educational coursework materials; or wherein the multimedia solutions further comprise interactive and passive delivery and feedback mediums including magnetic, optical, and printed materials. Osborne et al. discloses the use of multimedia

Art Unit: 3623

material to train employees (col. 3, lines 31-36; col. 4, lines 30-35; col. 7, lines 42-58).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Ibarra to utilize a library of multimedia educational materials for employees, particularly, since Ibarra discloses a problem solving session used to determine an action that will improve the employee's performance in an area, because the library would enhance the problem solving session conducted in Ibarra by providing employees with training materials specific to the identified problem area of the employee.

Claim 71 recites substantially similar subject matter as claims 41-43 above.

Therefore, claim 71 is rejected on the same basis as claims 41-43 above.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- McDonough et al. (U.S. 6,115,693) discusses a quality center and virtual sales center;
- Berkson (U.S. 6,049,779) discusses a call center incentive system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Tarae whose telephone number is 571-272-

Art Unit: 3623

6727. The examiner can normally be reached Monday – Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 571-272-6729.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



C. Michelle Tarae  
Patent Examiner  
Art Unit 3623

October 10, 2006